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No. 02-1684

IN THE SUPREME COURT OF THE UNITED STATES

MICHAEL YARBOROUGH, Warden of California State Prison—Los Angeles County, *Petitioner,*

v.

MICHAEL ALVARADO, *Respondent.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITIONER'S BRIEF ON THE MERITS

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QUESTIONS PRESENTED

1. Whether a state court adjudication can be deemed an "objectively unreasonable" application of clearly established Supreme Court law, for purposes of 28 U.S.C. § 2254(d), because it does not "extend" Supreme Court precedent to a new context.

2. Whether, in applying the objective test for a "custody" determination under *Miranda v. Arizona*, 384 U.S. 436 (1966), a court must consider the age and experience of a person if he or she is a juvenile.

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MICHAEL ALVARADO, *Respondent.*

OPINION OR JUDGMENT BELOW

The opinion of the Ninth Circuit Court of Appeals is reported as *Alvarado v. Hickman*, 316 F.3d 841 (CA9 2002), *amended* (2003), and is reproduced in the appendix to the petition for writ of certiorari. Pet. App. A1-A30.

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals granting habeas corpus relief was amended and entered on February 11, 2003. The Court of Appeals denied Warden Yarborough's petition for rehearing and suggestion for rehearing en banc on February 11, 2003. Pet. App. A5. The petition for writ of certiorari was filed on May 12, 2003, and was granted on September 30, 2003. The jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

(stating in support of the habeas reform in AEDPA, "Federal habeas corpus proceedings have become, in effect, a second round of appeals in which convicted criminals are afforded the opportunity to relitigate claims already considered and rejected by the State courts."); *Lockyer v. Andrade*, 123 S. Ct. at 1172.

This Court has recognized that the *Teague* "new rule" proscription is violated where "a prior decision is applied in a *novel setting*, thereby extending the precedent," or where an old rule is applied "*in a manner* that was not dictated by precedent." *Stringer v. Black*, 503 U.S. 222, 228 (1992) (emphasis added). For example, in *Butler*, 494 U.S. at 411, 415, this Court refused to retroactively extend, "in the context of a separate investigation," the earlier *Edwards v. Arizona* holding prohibiting re-initiation of police interrogation after a suspect invokes his *Miranda* right to counsel—even though in the meantime the Court in the direct-review case of *Arizona v. Roberson* indeed had prospectively extended the *Edwards* rule to that same new context. The *Butler* Court rejected the prisoner's argument that *Roberson* had not created a new rule but had merely applied the *Edwards* rule to a slightly different set of unique facts. *Id.* at 409, 414-15.

Similarly, in *Caspari v. Bohlen*, 510 U.S. 383, 396-97 (1994), this Court held that it would violate *Teague* to extend the "old rule" of *Bullington v. Missouri*—prohibiting a second capital sentencing hearing after the jury once had rejected the death penalty—into the different context of a second non-capital hearing for persistent-offender sentencing after the State at the first hearing had failed to prove facts showing the defendant's recidivist status. In this Court's phrase, extending the rationale of a legal principle, even if by only a "short step," amounts to an impermissible new rule of constitutional law under *Teague*. *Caspari*, 510 U.S. at 396-97.

Another of this Court's cases in the *Teague* line, *Sawyer v. Smith*, 497 U.S. at 236, illustrates another approach that may be taken in pinpointing clearly established Supreme Court law by viewing the nature of the legal ground addressed. In *Sawyer*,

the petitioner sought to rely on a series of earlier Supreme Court precedents as establishing the specific rule eventually recognized in *Caldwell v. Mississippi* prohibiting prosecutorial argument that misleads capital sentencing jurors into believing that someone else might make the ultimate sentencing choice. *Sawyer*, 497 U.S. at 232-33. The earlier series of precedents had invalidated sentencing schemes that prohibited consideration of mitigating evidence, while *Caldwell* quite differently invalidated a prosecutor's argument to the jury. *Sawyer*, 497 U.S. at 236. The underlying legal grounds thus were different. As the *Sawyer* Court stated, "[t]hese cases do not speak to the issue we decided in *Caldwell*." *Id.*

In addition, *Sawyer* noted that, "prior to *Caldwell* our cases did not put other courts on notice that the Eighth Amendment compelled the *Caldwell* result." 497 U.S. at 237. This notice element is also important under § 2254(d). Just as with *Teague*, requiring state courts to anticipate "extensions" of Supreme Court rules to novel contexts would defeat AEDPA's goal of providing notice to the state courts of the rules they must apply, i.e., the "clearly established" rules in United States Supreme Court precedents.

The "clearly established Federal law" provision of § 2254(d), of course, does not cut back on the protections that the *Teague* doctrine affords to final state court judgments. Indeed, it strengthens *Teague*-type protections. For § 2254(d)(1), in limiting clearly established law to that "determined by the Supreme Court of the United States," further limits the source of clearly established law to the holdings of this Court rather than the interpretative jurisprudence of other state or federal courts. *Williams*, 529 U.S. at 412.

In *Tyler v. Cain*, 533 U.S. 656, 662-63 (2001), this Court interpreted the reference in AEDPA's successive petition provision to "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court" to mean

RELEVANT STATUTORY PROVISIONS

The Fifth Amendment to the United States Constitution provides in relevant part:

> No person shall * * * be compelled in any criminal case to be a witness against himself * * * *

Section 2254 of Title 28 of the United States Code provides in pertinent part:

> (d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—
>
> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States * * * *

STATEMENT OF THE CASE

After midnight on September 22, 1995, respondent Michael Alvarado, Paul Soto, and others went to a shopping mall in Santa Fe Springs, California. They saw a truck driven by Francisco Castaneda. One person in Alvarado's group approached Mr. Castaneda and obtained a dollar from him. In Alvarado's presence, Soto said, "Let's jack," meaning that they should steal the truck. Soto walked to the driver's side of the truck, while Alvarado walked towards the passenger door. A gunshot and a scream followed. Mr. Castaneda was later found dead from a bullet wound. *See* Pet. App. C3-C4.

Approximately one month after the crime, Los Angeles County Sheriff's Detective Cheryl Comstock left word at Alvarado's house and with his mother at her workplace that the Sheriff's Department wanted to speak with Alvarado. Alvarado's mother told the detective that Alvarado's father would bring Alvarado to the Sheriff's station so he could be interviewed. Both parents went with Alvarado to the Sheriff's station and gave their permission for Detective Comstock to interview him. J.A. 72.

Alvarado was over seventeen and a half years old at the time of the interview. J.A. 344. The interview was conducted exclusively by Detective Comstock. J.A. 72. She did not tell Alvarado that he was under arrest, and she did not give him *Miranda* warnings. J.A. 72-165.

Alvarado's initial version of events omitted any mention of the crimes. Detective Comstock expressed her disbelief of Alvarado's story. Alvarado repeated his statement that he had seen no shooting. J.A. 101. Detective Comstock informed Alvarado that she had witnesses who said "quite the opposite," and that she had "three notebooks full of notes." J.A. 101-02. She urged him to tell the truth. J.A. 102. However, she never instructed him that he would have to remain in the Sheriff's station until he told the truth. *See* J.A. 72-165. Eventually, Alvarado gave further details of the crime. He described his role in hiding the gun after the murder and identified Soto as the shooter. J.A. 109-49.

At one point during the interview, Detective Comstock asked Alvarado where he was going after the interview. J.A. 122-23. Detective Comstock stopped the interview once to use the bathroom. J.A. 135. Near the end of the interview, the detective offered the use of a telephone to Alvarado, but he declined it. J.A. 149-50. Also near the end of the interview, Detective Comstock indicated that Alvarado would be allowed to return home after the interview. J.A. 150. Shortly thereafter, he was also offered an opportunity to take a bathroom break or water break, which he also declined. Detective Comstock said:

that the Supreme Court is the only entity that can make a new rule retroactive. This Court explained:

> The Supreme Court does not "ma[k]e" a rule retroactive when it merely establishes principles of retroactivity and leaves the application of those principles to lower courts. In such an event, any legal conclusion that is derived from the principles is developed by the lower court (or perhaps by a combination of courts), not by the Supreme Court.

Id. at 663. This Court further explained that the word "made" was analogous to the word "determined" in § 2254(d)(1)'s reference to "clearly established Federal law, as determined by the Supreme Court of the United States," in that both phrases refer to the holdings of the Supreme Court's decisions. *Id.* at 664. Under *Tyler*'s reasoning, when a lower court extends this Court's precedents to infer a rule that this Court itself has not held to be the rule, it cannot be said that the extended rule is "clearly established Federal law, as determined by the Supreme Court."

To allow a final state conviction to be overturned whenever a lower federal habeas court infers an extension of Supreme Court precedent would defeat Congress's evident purpose in limiting the basis for collateral attacks to the holdings actually articulated by this Court. Here, for example, the Ninth Circuit defended the challenged extension of this Court's precedent; but it was the Ninth Circuit itself that fashioned the extension. "Clearly established Federal law, as determined by the Supreme Court," however, does not embrace unannounced Supreme Court "holdings" that lower federal courts might construct or perceive in their own view of the law.

Extending Supreme Court precedent to a new context is inconsistent with the concept of clearly established Supreme Court law because it is outside of this Court's holdings. Just as *Butler*, *Caspari*, and *Sawyer* refused to allow an extension of

precedent under *Teague*, an extension of a Supreme Court holding into a new context cannot be "clearly established Federal law, as determined by the Supreme Court" under § 2254(d).

B. A State Court Adjudication That Declines To Extend Supreme Court Precedent To A Novel Setting Cannot Be "Contrary To" Clearly Established Federal Law As Determined By The Supreme Court

Even if the "clearly established Federal law, as determined by the Supreme Court" provision did not settle the issue of whether § 2254(d) allows relief for so-called unreasonable failures to extend Supreme Court precedent, the "contrary to" and "unreasonable application" provisions of the statute combine with it so as to leave no room for relief on such a theory.

After a federal habeas court has identified the "clearly established" Supreme Court law, the court must determine whether the state court's adjudication was "contrary to" it. The "contrary to" clause of § 2254(d) makes the writ available if the state court arrived at a conclusion opposite to that reached by this Court on a question of law or if the state court decided the case differently than the Supreme Court has on a set of materially indistinguishable facts. *Williams*, 529 U.S. at 412-13. The "contrary to" exception in this way ensures that the state courts enforce the holdings of Supreme Court decisions, even in cases presenting somewhat different facts and circumstances, as long as the new facts and circumstances are materially the same as what this Court's holding contemplated.

Under this Court's definition, however, a state court adjudication that forgoes extending a legal principle into a new context cannot be "contrary to" clearly established Supreme Court precedent. For an adjudication that does not "extend"—i.e., change—clearly established law cannot contradict or be "opposite" to a conclusion on a question of law

"Okay. If you do, just say so and we'll stop." J.A. 151. The interview lasted approximately two hours, from 12:30 to 2:30 in the afternoon. J.A. 72, 165. Alvarado returned home after the interview. J.A. 165.

Approximately two months later, the decision was made to charge Alvarado with Mr. Castaneda's murder and attempted robbery. Detective Comstock told Alvarado's parents that a warrant had been issued for Alvarado's arrest. Alvarado turned himself in at the Sheriff's station. J.A. 354-55; Pet. App. C15.

Prior to trial, Alvarado moved to exclude evidence of his statements to Detective Comstock. He argued that he should have been interviewed in his parents' presence. He also argued that the interview was a custodial interrogation and that he should have been advised of his constitutional rights under *Miranda*. *See* J.A. 169, 185-92, 194-96. The prosecution opposed the motion, arguing that *Miranda* advisements were not required because Alvarado was not in custody during the interview. J.A. 192-94. Following a hearing, the trial court denied Alvarado's motion to exclude his statements. J.A. 169, 185-97. An edited tape of his statements during the interview was played at trial. J.A. 334-39. Alvarado was convicted of murder and attempted robbery and was sentenced to state prison for a term of fifteen years to life. Pet. App. C5.

Alvarado appealed his convictions. He argued, again, that his statements should have been excluded because he was subjected to a custodial interrogation without being advised of his *Miranda* rights. Pet. App. C11. The California Court of Appeal rejected this claim. Pet. App. C11-C17. The court cited the facts that Alvarado was not told he could not leave until he told the truth, and that he was not subjected to intense and aggressive tactics. The court noted that, although Detective Comstock made it clear to Alvarado that she disbelieved his early, exculpatory version of the events on the night of the murder, she did not fabricate evidence or subject him to intense pressure. The court found that Alvarado was not in custody during his interview with Detective Comstock, and therefore

concluded that no *Miranda* warnings were required. Pet. App. C17. Alvarado's petition for review in the California Supreme Court was denied. J.A. 16.

Alvarado filed a petition for writ of habeas corpus under 28 U.S.C. § 2254 in the United States District Court for the Central District of California. The petition alleged that his statements were obtained in violation of *Miranda* because he was objectively in custody at the time of his police interrogation but was not given any *Miranda* advisements. J.A. 17-71. The magistrate judge issued a report recommending that the petition be denied with prejudice. The magistrate judge found that Alvarado had not been in custody during the interview and that his statements were properly admitted. The magistrate judge concluded that the California court's rejection of Alvarado's claim therefore precluded relief under § 2254(d) because the state court ruling was not contrary to, or an unreasonable application of, clearly established federal law as determined by this Court. Pet. App. B1-B8. The District Court filed an order adopting the findings, conclusions, and recommendations of the magistrate judge, and entered judgment denying the petition and dismissing it with prejudice. Pet. App. B9-B10.

Alvarado appealed. In a published decision, the Ninth Circuit held that a defendant's juvenile status alters the "in custody" determination for *Miranda* purposes. Pet. App. A1-A30. The Ninth Circuit acknowledged, however, that no Supreme Court case had required a juvenile's age and experience to be considered for a "custody" determination. Pet. App. A6, A22. But, it stated that Supreme Court cases had held that a juvenile is more susceptible to police coercion during a custodial interrogation than would be a similarly-situated adult. Pet. App. A17-A18. The court reasoned that, if the age and circumstances of a juvenile defendant are relevant factors in determining whether a confession or a waiver of constitutional rights are voluntarily given, there was "no principled reason why similar safeguards * * * would not apply equally to an 'in custody' determination." Pet. App. A18-A19. The Ninth

Circuit held that relief was available despite § 2254(d) because the state court's failure to address how Alvarado's juvenile status affected the "in custody" determination amounted to an unreasonable application of clearly established federal law. Pet. App. A22-A26.

The court further held that Alvarado had been "in custody." In determining that he was in custody, the court considered the additional factors of Alvarado's age, his lack of prior arrest history, his inexperience with law enforcement officers, the parental involvement in arranging for his interview, and Detective Comstock's alleged refusal to let his parents attend the interview. Pet. App. A20, A25-26. The Ninth Circuit also held that the improper admission of the incriminating statements by the state court had a substantial and injurious effect on the subsequent jury verdict. The Court of Appeals reversed the District Court's denial of the habeas petition and remanded the case for the District Court to issue a conditional writ of habeas corpus directing that Alvarado be released from custody unless the state began trial proceedings within 120 days of the issuance of the mandate. Pet. App. A30.

SUMMARY OF ARGUMENT

I. Section 2254(d) prohibits a federal court from granting habeas relief where a state court has adjudicated a state prisoner's federal claim on the merits, unless the state court decision is contrary to or an objectively unreasonable application of clearly established federal law as determined by the Supreme Court. The language of § 2254(d) does not include an extension of Supreme Court precedents to a new context as a ground for habeas relief.

As a threshold matter, this Court has already held that § 2254(d) limits "clearly established Federal law, as determined by the Supreme Court of the United States" to the holdings of this Court's decisions. When collateral relief depends on

xtending a rule of Supreme Court decisions to a novel context, he extension will necessarily involve ambiguous or unclear ontours of legal principles or new legal grounds. By definition, uch an extension will not have already been clearly established t the time of the state court adjudication.

The clause "as determined by the Supreme Court of the Jnited States," further restricts the source of clearly established aw. That restriction bars lower federal courts from extrapolating a rule from Supreme Court precedents that this Court itself has not held to be a rule of law. Thus, a state court s not required to anticipate changes in a well-settled core rule for its decision to be accorded § 2254(d)'s protection.

Section 2254(d) forbids continuing reexamination of final state judgments based upon later emerging legal doctrine. The "contrary to" and "unreasonable application" clauses provide no authorization for granting habeas relief when a state court does not extend Supreme Court precedent. By allowing only these two narrow exceptions to the general statutory prohibition against collateral relief, Congress contemplated that writs would not be issued under any other circumstances under § 2254(d)(1). The "contrary to" clause makes relief available only if the state court arrived at a conclusion opposite to that reached by this Court on a question of law or if the state court decided the case differently than the Supreme Court has on a set of materially indistinguishable facts. By definition, a state court decision that does not extend Supreme Court precedent cannot be "opposite" to a conclusion on a question of law that this Court has never decided. Similarly, refusing to extend a legal rule does not decide a case differently than the Supreme Court has on a set of materially indistinguishable facts.

The "unreasonable application" clause allows relief only if the state court identifies the correct governing legal principle from this Court's decisions, but unreasonably applies that principle to the facts of the case. An extension of a legal principle to a novel setting is not an application of clearly established Supreme Court precedent because "application" and

"extension" do not share the same meaning. Extension means development, expansion, and innovation, while application assumes the existence of a defined rule governing an established context. Furthermore, even if extension of a legal principle to a new context could be considered an application of clearly established Supreme Court law, a state court's adjudication that does not extend Supreme Court law will rarely be objectively unreasonable, for reasonable minds will differ whether a precedent of this Court dictates its extension.

To allow habeas corpus relief where the state court correctly identifies and invokes this Court's holdings and reasonably applies this Court's rules would run afoul of § 2254(d). The Ninth Circuit's decision in this case illustrates that granting relief because a state court decision did not extend Supreme Court precedent as innovated by a lower federal court, is irreconcilable with § 2254(d). The Ninth Circuit changed this Court's rule for a "custody" determination for *Miranda* purposes by engrafting onto it a rule from the fundamentally distinct context of voluntariness. The Ninth Circuit recognized that no Supreme Court case had previously set forth such a new rule, yet determined that the state court unreasonably applied clearly established Supreme Court law because it did not apply the Ninth Circuit's altered rule.

II. The California Court of Appeal's decision was not only objectively reasonable, but correct. *Miranda* warnings are required only when a person is "in custody." "Custody" is not a state of mind. Rather, as this Court has repeatedly explained, an individual is in "custody" when he or she is under formal arrest or restrained in freedom of movement to the degree associated with a formal arrest. Not all coercive environments mandate *Miranda* warnings. There is only one type of coercive environment to which *Miranda* applies, one in which the person is restrained in freedom of movement to the degree associated with a formal arrest. Police officers are not required to give warnings to persons who are not under that type of restraint.

This Court has never required police officers to anticipate the frailties or idiosyncracies of the person they question. Instead, when this Court has determined "custody," it has considered only whether objective external factors amounted to restraint on freedom of movement associated with formal arrest.

Age and experience are individual characteristics that bear no relation to the degree of restraint on freedom of movement. A juvenile's age and experience might be relevant to the question of the voluntariness of a confession. The voluntariness of a confession, however, is a distinct and separate inquiry from the custody determination. To include age and experience in a custody determination would conflate the two different inquiries.

Including a juvenile's age and experience for a custody determination also would unrealistically require law enforcement officers to divine the age and experience of a juvenile. Law enforcement officers would face the prospect that identical police conduct would not be deemed "custody" for some individuals, but would be for others, thus blurring the *Miranda* advisement guidelines for officers to follow. As a practical consequence, a *per se* rule like that fashioned by the Ninth Circuit would result and would require police officers to give *Miranda* advisements to all juveniles and persons that police officers suspect to be juvenile, regardless of whether the persons are in custody. An overly-broad *Miranda* rule for juveniles would potentially exclude free and voluntary confessions deserving of the highest credit.

ARGUMENT

I.

SECTION 2254(d)'S BAR AGAINST HABEAS CORPUS RELIEF FOR CLAIMS ADJUDICATED IN STATE COURT UNDER CLEARLY ESTABLISHED LAW ALLOWS NO EXCEPTIONS FOR INSTANCES IN WHICH THE STATE COURT REFRAINS FROM "EXTENDING" THIS COURT'S HOLDINGS TO A NOVEL CONTEXT

In enacting the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Congress profoundly changed the role of the federal habeas corpus courts in order to ensure that state court convictions are given effect to the fullest extent possible under the law. *Bell v. Cone*, 535 U.S. 685, 693 (2002). Where the state court has adjudicated a state prisoner's federal claim on its merits, the AEDPA through 28 U.S.C. § 2254(d) protects the state judgment and precludes habeas corpus relief unless the state court ruling was egregiously indefensible in light of federal law "clearly established" in the holdings of this Court's precedents. *See Williams v. Taylor*, 529 U.S. 362, 412 (2000). Thus, where it applies, § 2254(d)(1) bars relief except where the state court decision is "contrary to," or directly flouts, such clearly established law, or where the state court applies clearly established law to the facts of the case in an objectively unreasonable way. In *Williams*, this Court left open the question of how "extension of legal principle cases" should be treated under § 2254(d). 529 U.S. at 408-09.

Relief based upon a lower court's "extension" of Supreme Court law to a novel setting does not fit into the statutory framework. An "extension" of Supreme Court law entails altering the scope of a rule of law or invoking it in a novel setting to resolve a legal ground different from that which the rule was adopted to govern. In this case, for example, the Ninth

Circuit extended a legal rule governing voluntariness of confessions to the distinct setting of a claim of custody. The lower court's extension changed the rule of law governing custody as articulated in this Court's precedents. A new extension of a rule, wrought by a lower court, cannot already have been "clearly established" law "as "determined by the Supreme Court" under § 2254.

Nor can a state court decision that refrains from anticipating what almost inevitably would be a debatable extension of this Court's precedents be deemed either "contrary to" or an objectively "unreasonable application of" such clearly established law. A ruling can hardly be deemed "contrary to" a proffered extension of a rule of law that this Court has never adopted. Nor can refraining from changing a rule of law be accurately categorized as unreasonably "applying" it, for extending a rule is qualitatively different from simply applying a settled rule to evaluate particular facts.

Here, the California Court of Appeal correctly identified this Court's clearly established objective test for determining custody for *Miranda* purposes, applied that rule to the individual facts, and reasonably determined that the circumstances did not establish that Alvarado was in custody. Yet the Ninth Circuit, despite recognizing that this Court had never required consideration of a juvenile suspect's individual characteristics or subjective viewpoint in determining custody, rejected the state court ruling as "unreasonable" under § 2254(d) because it did not change the rules and extend this Court's precedents so as to require consideration of such factors. To allow habeas corpus relief where the state court faithfully identifies and invokes this Court's precise holdings and reasonably applies those accepted rules to the facts of an individual case, however, violates the command of § 2254(d).

A. "Clearly Established Federal Law, As Determined By The Supreme Court Of The United States" Does Not Include An Extension Of A Supreme Court Holding To A Novel Setting

As the baseline, the federal habeas court under § 2254(d) must ascertain what constitutes "clearly established Federal law, as determined by the Supreme Court of the United States." *Lockyer v. Andrade*, 583 U.S. 63, __, 123 S. Ct. 1166, 1172 (2003). The "clearly established Federal law" provision sets out the narrow limits on a federal habeas corpus court's power to override a final state court conviction. Under the strengthened protection that § 2254(d) affords to the finality of state criminal convictions, a prisoner collaterally attacking a state adjudication of his federal claim must demonstrate that the state ruling is irreconcilable with a limited, core set of rules "clearly established" by the "holdings, as opposed to the dicta, of this Court's decisions as of the time of the relevant state-court decision." *See Williams*, 529 U.S. at 412.

Where collateral relief depends on extending a Supreme Court rule of law so as to apply it to a novel context or to a different kind of claim, however, it necessarily will involve invoking unexplored contours of a rule rather than the core rule that itself has been "clearly established" by this Court. But, as this Court recently explained in *Lockyer v. Andrade*, 123 S. Ct. at 1173, 1175, a final state court conviction is not required to conform, in retrospect, with unclear contours of legal principles that might be clearly established in other respects. *Accord, Mitchell v. Esparza*, No. 02-1369, slip op. at 5-6 (U.S. Nov. 3, 2003). *Andrade* recognized that the pertinent rule in that case, insofar as it was "clearly established" from this Court's Eighth Amendment precedents, simply provided for review of prison sentences under a general "gross disproportionality" standard. *Andrade*, 123 S. Ct. at 1173. As *Andrade* explained, the Court's precedents had not clearly established what factors would demonstrate disproportionality in a particular prison term

of years. *Id.* at 1173, 1175. Thus, § 2254(d) resists the notion that habeas corpus relief is available where the state court correctly identifies this Court's "clearly established" law but refrains from extrapolating further from this Court's core rules. A new extension endorsed by a lower court cannot be "clearly established" Supreme Court law.

This Court's habeas corpus retroactivity jurisprudence, as developed in *Teague v. Lane*, 489 U.S. 288 (1989) (plurality op.), and its progeny, recognizes the difference between "clearly established" law and extensions of precedent into novel settings. Under *Teague*, a habeas petitioner normally cannot benefit from a "new rule" of criminal procedure announced after his conviction became final on direct appeal. 489 U.S. at 305-10. A new rule under *Teague* is one that is "not *dictated* by precedent existing at the time the defendant's conviction became final." *Id.* at 301 (emphasis in original). Stated another way, a case announces a "new rule" when it breaks new ground or imposes a new obligation on the States or the Federal Government. *Butler v. McKellar*, 494 U.S. 407, 412 (1990). In barring relief based on "new rules," the *Teague* doctrine recognizes that the purpose of federal habeas corpus is to guarantee that state convictions comport with the federal constitutional law in existence at the time the conviction became final, and not to continually reexamine final judgments based upon later emerging legal doctrine. *Sawyer v. Smith*, 497 U.S. 227, 234 (1990).

In defining "clearly established Federal law, as determined by the Supreme Court of the United States," this Court has said that, "whatever would qualify as an old rule under our *Teague* jurisprudence will constitute 'clearly established Federal law, as determined by the Supreme Court of the United States' under § 2254(d)(1)." *Williams*, 529 U.S. at 412. The phrase "clearly established Federal law, as determined by the Supreme Court of the United States," similarly prohibits reexamination of final judgments based upon later emerging legal doctrine. *See* 141 Cong. Rec. S7845 (June 7, 1995) (statement of Sen. Hatch)

that this Court itself has never reached. Nor does a refusal to "extend" the governing legal rule decide a case differently than the Supreme Court has on a set of materially indistinguishable facts. If a materially indistinguishable set of facts is involved, then no alteration of the legal rule that this Court has adopted for such situations is necessary in order to allow habeas corpus relief. Instead, relief would be allowable because the clearly established law itself dictates it, without resort to extensions or changes in that law.

It is not surprising, then, that the Ninth Circuit in this case never purported to rest its grant of the writ on the "contrary to * * * clearly established Federal law" exception to § 2254(d)'s prohibition against relief. That exception does not allow the possibility of holding a state conviction hostage to the invocation of asserted rules of law never set out in this Court's precedents. It is significant that Congress chose to employ the "contrary to" criterion as the statutory provision that deals directly with disputes about the identity and scope of the abstract legal rules that govern the prisoner's claim. *See Williams*, 529 U.S. at 412-13. If Congress had intended to expose the final state-court judgment to attack based upon failures to "extend" clearly established law, it would not have chosen a criterion that, as this Court has explained, contemplates no variations on Supreme Court holdings other than those that directly contradict them. Instead, recognizing that extensions of precedent will inevitably be controversial, with reasonable arguments for and against the extensions to be predicted, Congress allowed only a strict "contrary to" exception in order to protect state convictions from federal nullification on such grounds.

C. Declining To Extend A Legal Principle To A New Context Cannot Be An "Unreasonable Application" Of Clearly Established Supreme Court Law

Finally, if the state court applied the correct Supreme Court rule, the federal court under § 2254(d)(1) determines whether it was applied in an objectively reasonable manner. Under the "unreasonable application" clause, a federal habeas court may grant the writ if the state court identifies the correct governing legal principle from this Court's decisions but unreasonably applies that principle to the facts of the prisoner's case. *Williams*, 529 U.S. at 413.

1. "Extending" Is Not "Applying"

An extension of a legal principle to a new context is not an "application" of clearly established Supreme Court law. Neither the word nor the concept of "extension" appears in § 2254(d). Extension means "a stretching out or stretching forth," "lengthening, furthering, developing," or "expansion, enlargement, augmentation, increase." Webster's Third New Int'l Dictionary 804 (2002). In contrast, an "application" is commonly understood to mean, "the bringing to bear (as of one general statement upon another) by way of elucidation." *Id.* at 105. Extension and application do not commonly have the same meaning. The former contemplates innovation, liberalization, and expansion; the latter presupposes the existence of commonly understood rules within a recognized and established context.

In a sophisticated analysis, the Eleventh Circuit in *Hawkins v. Alabama*, 318 F.3d 1302, 1306 n.3 (CA11 2003), disagreed with the Ninth Circuit's treatment of "extending" precedent as an incident of "applying" clearly established law. The Eleventh Circuit explained the import of "extend" as the Ninth Circuit used it in the decision below:

> But "extend" in a different sense, can mean to "widen the range, scope, area of application of (a law, operation, dominion, state of things, etc.); to enlarge the scope of meaning of (a word)." 5 *The Oxford English Dictionary* 595 (2d ed. 1989). *See generally Alvarado*, 2002 WL 31829483 at *9, at --. In this sense, we see an impermissible conflict with Congress's expressed intent in AEDPA.

Hawkins, 318 F.3d at 1306 n.3. The *Hawkins* court explained as follows:

> We reject that Congress intended for AEDPA's protection for state court decisions to be conditioned on the state court's widening, or enlarging, the rules made by Supreme Court decisions. To widen the scope of or to enlarge Supreme Court rules is not to follow "clearly established" Supreme Court law, but is to innovate.

Id. The Eleventh Circuit held that, to acquire § 2254(d)'s protection, a state court is not required to predict that the Supreme Court might widen its rule if it were faced with new and substantially different circumstances. *Id.*

Put differently, whether a rule is being extended to a novel setting instead of simply being applied to the facts depends in large part on the nature of the rule. *Cf. Wright v. West*, 505 U.S. 277, 308-09 (1992) (Kennedy, J., concurring) (stating that whether a prisoner seeks the application of an old rule in a novel setting, and thus a new rule, depends in large part on the nature of the rule). If a rule is specific, or designed for the purpose of evaluating facts within a particular context, application of the rule to facts outside of that context would constitute an extension of that rule into a novel setting. A rule that specifically applies in one context, or that is designed to govern one type of claim, necessarily is changed or extended when it is

imported into a different context or used to resolve a different claim. Here, for example, the Ninth Circuit took a legal rule for determining voluntariness and imported it into a different context to resolve a custody claim. By extending the rule, the Ninth Circuit fundamentally changed the rule for resolving a custody claim.

There also are rules of general application designed for the purpose of evaluating a myriad of disparate factual contexts. *Cf. id.* at 309 (Kennedy, J., concurring). Straightforward applications of a rule of general application such as that of *Jackson v. Virginia*, 443 U.S. 307 (1979), for evaluating the sufficiency of evidence in support of a conviction, will not result in "extensions" of the *Jackson* rule merely on account of the variations in the facts and evidence of each new case. Nevertheless, a misapplication of a rule of general application might yield an improper extension of Supreme Court precedent to a novel setting. *See Williams*, 529 U.S. at 408 (stating, "in some cases it will be hard to distinguish a decision involving an unreasonable extension of a legal principle from a decision involving an unreasonable application of law to facts."). Careful scrutiny of purported "applications" of such general rules therefore is necessary to avoid hidden "extensions" of law. Here, however, the extension is not hidden. The Ninth Circuit changed the rule and therefore did not "apply" a clearly established rule.

2. Declining To Extend Is Not Unreasonable

Even if an extension of a legal principle could be considered an application of clearly established Supreme Court law, it is difficult to conceive that a state court ruling that does not extend well-settled Supreme Court doctrine to a novel setting would be objectively unreasonable and therefore the basis of relief under § 2254(d). In *Williams v. Taylor*, 529 U.S. at 411, this Court discussed the meaning of § 2254(d)(1)'s use of the word "unreasonable," as follows:

> Under § 2254(d)(1)'s "unreasonable application" clause, then, a federal habeas court may not issue the writ simply because that court concludes in its independent judgment that the relevant state-court decision applied clearly established federal law erroneously or incorrectly. Rather, that application must also be unreasonable.

Moreover, the application must be objectively unreasonable. *Id.* at 409. Accord, *Yarborough v. Gentry*, No. 02-1597, slip op. at 5, 10-11 (U.S. Oct. 20, 2003).

Because of the high threshold set by § 2254(d), only in the rarest of cases could it be argued that a state adjudication that refrains from extending clearly established federal law to a new context is objectively unreasonable under § 2254(d). There have been many instances in which jurists have reasonably disagreed as to whether Supreme Court law should be extended, and subsequently this Court has clarified that it did not intend such extensions. "Courts frequently view their decisions as being 'controlled' or 'governed' by prior opinions even when aware of reasonable contrary conclusions reached by other courts." *Butler*, 494 U.S. at 415.

For example, in *Moran v. Burbine*, 475 U.S. 412, 419 (1986), the First Circuit held that the police's failure to inform the defendant that an attorney retained by the defendant's sister was trying to reach him vitiated the defendant's waiver of his *Miranda* rights. The defendant argued that *Miranda* should have been extended to condemn the conduct of the police. *Id.* at 424. This Court reversed the First Circuit's judgment and declined to extend *Miranda*'s reach. *Id.* at 427. In doing so, this Court recognized that a number of state courts had reached a contrary conclusion:

> [H]owever, our interpretative duties go well beyond deferring to the numerical preponderance of lower court decisions * * *. Nothing we say today disables

> the States from adopting different requirements for the conduct of its employees and officials as a matter of state law. We hold only that the Court of Appeals erred in construing the Fifth Amendment to the Federal Constitution to require the exclusion of respondent's three confessions.

Id. at 427-28.

In *Fare v. Michael C.*, 442 U.S. 707, 722 (1979), the California Supreme Court determined that the close relationship between juveniles and their probation officers compelled the conclusion that a probation officer was sufficiently like a lawyer so that, for purposes of *Miranda*, the request by a juvenile to speak with his probation officer *per se* constituted an invocation of his Fifth Amendment right. This Court reversed, refusing to extend *Miranda*'s requirements. *Id.* at 722-23.

As demonstrated in *Fare* and *Moran* and as reflected in this Court's *Teague* cases, reasonable minds will differ whether a precedent of this Court compels an extension into a new context. A state court's adjudication that does not extend Supreme Court law to a novel setting will rarely be objectively unreasonable because extending well-settled legal rules will usually have reasonable countervailing arguments that may even be adopted by this Court. Stated another way, if the application of the Court's clearly established precedent to a given set of facts were truly so predictable as not to admit reasonable countervailing arguments, the application would not be an extension. Under § 2254(d), habeas relief cannot be granted on account of a state court's refusal to extend Supreme Court law to a new context.

Under § 2254(d), a federal habeas court shall not grant a petition for writ of habeas corpus except for two situations—the state court adjudication resulted in a decision that (1) "was contrary to . . . clearly established Federal law, as determined by the Supreme Court of the United States," or (2) "involved an unreasonable application of . . . clearly established Federal law,

as determined by the Supreme Court of the United States." *Williams*, 529 U.S. at 412. By setting forth those two narrow exceptions in § 2254, Congress contemplated the type of state court decisions that would require writs to be issued. Had Congress intended to permit a federal habeas court to grant a writ for an unreasonable extension of clearly established Supreme Court law, it would have accordingly amended § 2254(d). *See Northbrook Nat'l. Ins. Co. v. Brewer*, 493 U.S. 6, 12-13 (1989).

D. Because The State Court's Adjudication Was Neither Contrary To Nor An Unreasonable Application Of Clearly Established Supreme Court Precedent, The Ninth Circuit Improperly Granted Habeas Relief Under § 2254(d) By Extending A Supreme Court Holding To A New Context

This case presents, precisely, the incongruity of condemning a state decision as contrary to law or as objectively unreasonable merely for not extending this Court's holdings to a new context under § 2254(d)(1). Here, the state court's decision was neither contrary to nor an unreasonable application of clearly established Supreme Court precedent for a "custody" determination for *Miranda* purposes. The Ninth Circuit, however, improperly applied § 2254(d), by requiring the state court to extrapolate Supreme Court precedent from the voluntariness context to a "custody" determination in a way this Court has never done.

1. The State Court's Adjudication Was Neither Contrary To Nor An Unreasonable Application Of Clearly Established Supreme Court Precedent

Here, Alvarado claimed that he should have been advised of his *Miranda* rights because he was in custody during his interview. J.A. 46-69. The Supreme Court law as to a

"custody" determination pursuant to *Miranda* is clearly established. As further discussed below (*see* Argument II), *Miranda* requires warnings only when there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest. *California v. Beheler*, 463 U.S. 1121, 1125 (1983); *Miranda*, 384 U.S. at 444. *Miranda* warnings are limited to only that sort of coercive environment. *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977). As the Ninth Circuit acknowledged, the state court correctly identified this Court's objective test for determining custody for *Miranda* purposes. Pet. App. A7. The state court's decision was not contrary to clearly established Supreme Court precedent.

The state court then looked at the pertinent circumstances surrounding Alvarado's interview. Pet. App. C12-C17. The court cited facts including that: Alvarado was not told he could not leave until he told the truth; he was not subjected to intense and aggressive tactics; and although Detective Comstock made it clear to Alvarado that she disbelieved his early, exculpatory version of the events on the night of the murder, she did not fabricate evidence or subject him to intense pressure. Pet. App. C17. Although the Ninth Circuit criticized the state court for failing to consider that Alvarado's parents were refused permission to be present during the interview, there was no evidence presented to support the allegation. *See* J.A. 72-165, 331-39, 350-54, 437-39; Pet. App. A25-A26. The state court reasonably determined that Alvarado was not in custody and no *Miranda* warnings were required. Pet. App. C17. As in *Yarborough v. Gentry*, slip op. at 5, "[t]hat conclusion was supported by the record." That is all that was required by AEDPA.

The California Court of Appeal's decision in the instant case was also consistent with the decisions of at least three other circuits. *See United States v. Erving L.*, 147 F.3d 1240, 1248 (CA10 1998) (declining to create a dual track for "in custody" determinations by making such determinations objective when the suspect is an adult but subjective when the suspect is a child

because such an approach is directly contrary to the approach adopted by the Supreme Court); *United States v. J.H.H.*, 22 F.3d 821, 823, 831 (CA8 1994) (rejecting fourteen-year-old defendant's argument that his police interview was a custodial interrogation and his statement was coerced by threats without addressing or analyzing the "juvenile's status"); *United States v. Macklin*, 900 F.2d 948, 949-51 (CA6 1990) (holding that a reasonable person test, rather than a subjective test, is appropriate to determine whether a mildly retarded suspect was in custody). The California Court of Appeal's adjudication was not an unreasonable application of clearly established Supreme Court law. Accordingly, the state court's decision was entitled to AEDPA protection and precluded habeas corpus relief.

2. The Ninth Circuit's Decision Runs Afoul Of § 2254(d)

The Ninth Circuit, however, did not accord the state court's decision AEDPA protection. Instead, the Ninth Circuit took a rule that applied in the voluntariness context, engrafted it onto the "custody" context, and condemned the state court for not doing the same thing. This sort of an alteration of a Supreme Court rule is an extension of precedent that is irreconcilable with AEDPA.

This Court had never required consideration of a juvenile suspect's individual characteristics or subjective viewpoint in determining custody for *Miranda* purposes. This Court's standard for determining custody for *Miranda* purposes is the well-established objective test that requires warnings only when there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest. The Ninth Circuit recognized as much. Pet. App. A7 (stating that the California Court of Appeal identified the correct legal standard for making an "in custody" determination), A22 (acknowledging that the Supreme Court has not had a specific occasion to analyze how

a defendant's juvenile status may alter an "in custody" determination).

Despite this recognition, the Ninth Circuit adopted an overly-expansive view of clearly established Supreme Court law. And by doing so, the Ninth Circuit changed the rule for determining custody for *Miranda* purposes. The Ninth Circuit cited *Haley v. Ohio*, 332 U.S. 596 (1948), *Fare v. Michael C.*, 442 U.S. 707, *In re Gault*, 387 U.S. 1 (1967), and their progeny, in support of its assertion that "due process demands that a defendant's juvenile status be taken into consideration when determining the proper procedural safeguards that attach to a custodial interrogation." Pet. App. A6. These cases, however, all consider a defendant's juvenile status in determining the voluntariness of a confession or the voluntariness of a waiver of constitutional rights. *Fare*, 442 U.S. at 725; *In re Gault*, 387 U.S. at 45; *Haley*, 332 U.S. at 599-601. They do not speak to the issue raised in the instant case—a "custody" determination pursuant to *Miranda*. Rather, they apply to this Court's longstanding voluntariness jurisprudence, which was designed to answer a different question—not whether a suspect is in custody so as to trigger *Miranda* warnings, but whether a particular person's will was overborne. The latter inquiry inherently and necessarily considers the individual characteristics of the particular person. *See Fare*, 442 U.S. at 724-26. These voluntariness cases are not even analogous to "custody" determination cases and hardly put other courts on notice that *Miranda* compelled considering a defendant's juvenile status in determining whether the defendant was in custody.

The Ninth Circuit erroneously changed the custody test and broadened it at a level of generality that made the "clearly established" law limitation meaningless. *See Sawyer*, 497 U.S. at 236. In a way, the Ninth Circuit recast and reshaped Alvarado's claim that he should have been advised of his rights pursuant to *Miranda*, and transformed it into an involuntariness of confession claim. The improper effect is that the court

imposed a new obligation on the state courts. *Cf. Butler*, 494 U.S. at 412.

It is true that the Ninth Circuit noted that a number of state court decisions, mostly from intermediate courts, have ruled that juvenile status is relevant to the "in custody" determination. Pet. App. A19-A20 n.5. Of course, this Court's "interpretive duties go well beyond deferring to the numerical preponderance of lower court decisions * * *." *Moran*, 475 U.S. at 427. Moreover, if state courts faithfully follow clearly established Supreme Court law in determining custody under *Miranda*, it would not be surprising that their decisions will not refer to or rely on a juvenile's age and experience. *See, e.g., J.H.H.*, 22 F.3d at 831. To conclude that a juvenile's status should be considered in determining "custody" for *Miranda* purposes might be a salutary policy innovation, but it was certainly not dictated by this Court's clearly established *Miranda* precedent. *See Lockyer v. Andrade*, 123 S. Ct. at 1173, 1175.

To the contrary, this Court's precedent suggests the opposite of the Ninth Circuit's holding. This Court has repeatedly held that there is a fundamental distinction between the voluntariness of a confession and a "custody" determination for *Miranda* purposes. *Dickerson v. United States*, 530 U.S. 428, 434-35, 444 (2000); *Berkemer v. McCarty*, 468 U.S. 420, 433 n.20 (1984). Whether a juvenile's status should be considered in determining "custody" for *Miranda* purposes is not a foregone conclusion and is not dictated by legal principles in the separate inquiries of voluntariness of confessions and waivers of constitutional rights.

There was no clearly established law requiring the state court to consider Alvarado's juvenile status in determining whether he was "in custody" pursuant to *Miranda*. Under § 2254(d), a writ may not be granted when the state court abstained from creating a new rule for a "custody" determination for juveniles under *Miranda*.

II.

A JUVENILE'S AGE AND EXPERIENCE ARE IRRELEVANT FOR DETERMINING "CUSTODY" FOR *MIRANDA* PURPOSES

The state court's determination that Alvarado was not in "custody" for *Miranda* purposes was not simply reasonable and entitled to deference under § 2254(d). It also proves to be correct.

The question is whether age and experience are relevant additional factors bearing on "custody" during an interview so as to require *Miranda* warnings. The answer is that a juvenile's age and experience are irrelevant for determining "custody" for *Miranda* purposes because, as this Court has consistently recognized, "custody" depends upon whether external objective factors amounted to a formal arrest. The Ninth Circuit fundamentally misconceived the *Miranda* rule when it held that a court must consider a juvenile's age and experience in determining whether he or she was in custody for *Miranda* purposes.

A. *Miranda* Requires Warnings Only When The Individual Is Under Formal Arrest Or Restrained To The Degree Associated With A Formal Arrest

Prior to *Miranda*, this Court evaluated the admissibility of a criminal defendant's confession under a voluntariness test that recognized that coerced confessions are inherently untrustworthy. *Dickerson*, 530 U.S. at 432-33. *Miranda* created a rule that requires certain warnings only when there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest. *Miranda*, 384 U.S. at 444. To safeguard the uncounseled individual's Fifth Amendment privilege against self-incrimination, *Miranda* held that suspects interrogated while in police custody must be told that they have a right to remain silent, that anything they say

may be used against them in court, and that they are entitled to the presence of an attorney, either retained or appointed at the interrogation. *Id.*

The *Miranda* Court explained, "By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Miranda*, 384 U.S. at 444. *Miranda* does not require police officers to give warnings to persons who are not under restraint. *Id.* at 477. "There is no requirement that police stop a person who enters a police station and states that he wishes to confess to a crime, or a person who calls the police to offer a confession or any other statement he desires to make." *Id.* at 478.

A coercive environment, alone, does not trigger *Miranda* warnings. "[A] noncustodial situation is not converted to one in which *Miranda* applies simply because a reviewing court concludes that, even in the absence of formal arrest or restraint on freedom of movement, the questioning took place in a 'coercive environment.'" *Oregon v. Mathiason*, 429 U.S. at 495. "*Miranda* warnings are required only where there has been a restriction on a person's freedom as to render him 'in custody.' It was *that* sort of coercive environment to which *Miranda* by its terms was made applicable, and to which it is limited." *Id.* (emphasis in original).

In reversing a California Court of Appeal's decision that a defendant was in custody for *Miranda* purposes, this Court in *California v. Beheler*, 463 U.S. at 1124-25, criticized the state court's consideration of irrelevant factors such as the length of time that elapsed between the commission of the crime and the police interview and that the police knew more about Beheler before his interview than they did in *Mathiason*. The *Beheler* Court stated:

> Although the circumstances of each case must certainly influence a determination of whether a suspect is "in custody" for purposes of receiving

> *Miranda* protection, the *ultimate inquiry* is simply whether there is a "formal arrest or restraint on freedom of movement" of the degree associated with a formal arrest.

Id. (quoting *Mathiason*, 429 U.S. at 495) (emphasis added).

The Warden recognizes that this Court has sometimes described the "in custody" determination as a "reasonable person test." *See, e.g., Thompson v. Keohane*, 516 U.S. 99, 112 (1995); *Stansbury v. California*, 511 U.S. 318, 325 (1994); *Berkemer*, 468 U.S. at 442. But even a cursory review of those cases discloses that this Court's references to a "reasonable person" were intended to explain why the interrogating police officer's subjective intention did not control the "custody" determination, and that any use of "reasonable person" language was not meant to alter the ultimate objective inquiry that focused on external indicia of arrest.

The "reasonable person" language, in connection with a "custody" determination, first appears in *Berkemer v. McCarty*. In *Berkemer*, the defendant argued that the roadside questioning of a motorist detained pursuant to a routine traffic stop should be considered a custodial interrogation. 468 U.S. at 435. This Court rejected the argument. *Id.* at 437. In holding that the defendant was not in custody before his arrest, this Court stated:

> Although Trooper Williams apparently decided as soon as respondent stepped out of his car that respondent would be taken into custody and charged with a traffic offense, Williams never communicated his intention to respondent. A policeman's unarticulated plan has no bearing on the question whether a suspect was "in custody" at a particular

> time; the only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation.

Id. at 442 (footnote omitted).

Thus, the *Berkemer* court used the phrase "reasonable man" to explain that the state trooper's unarticulated plan to charge the defendant with a traffic offense did not bear on whether the defendant was in custody. In finding that the defendant did not need to be given *Miranda* warnings prior to the time the state trooper placed him under arrest, however, the *Berkemer* court concluded that the defendant "has failed to demonstrate that, at any time between the initial stop and the arrest, he *was subjected to restraints comparable to those associated with a formal arrest*." *Id.* at 441 (emphasis added). The *Berkemer* Court stated, "It is settled that the safeguards prescribed by *Miranda* become applicable as soon as a suspect's freedom of action is curtailed to a 'degree associated with formal arrest.'" *Id.* at 440 (quoting *Beheler*, 463 U.S. at 1125).

Berkemer's reference to a reasonable person clearly did not contemplate consideration of individual characteristics such as a juvenile's age or experience. *Berkemer* specifically explained that the custody inquiry does not "place upon the police the burden of anticipating the frailties or idiosyncracies of every person whom they question." *Berkemer*, 468 U.S. at 442 n.35 (quoting *People v. P.*, 21 N.Y. 2d 1, 9-10, 233 N.E.2d 255, 260 (1967)). In specifying that the reasonable person test is an objective test, this Court recognized that a suspect's state of mind has no substantial relevance to the indicia of custody. *Berkemer*, 468 U.S. at 442 n.35.

Stansbury v. California, 511 U.S. at 325, also quoted *Berkemer's* language about a "reasonable" person. But, as in *Berkemer*, the Court in *Stansbury* merely recognized again that an officer's subjective and undisclosed view concerning whether the person being interrogated is a suspect is irrelevant to the assessment of whether the person is in custody, and did

not depart in any way from the rule that custody depends on objective indicia of arrest. The *Stansbury* Court emphasized that "it is the *objective surroundings*, and not any undisclosed views, that control the *Miranda* custody inquiry." *Id.* at 325 (emphasis added). Ultimately, the *Stansbury* Court declined to determine whether the defendant was in custody for purposes of *Miranda* and remanded the case for the California Supreme Court to consider the question. *Id.* at 326.

Third, in the course of holding that federal habeas courts independently review state-court "in custody" determinations, this Court in *Thompson v. Keohane* stated:

> Two discrete inquiries are essential to the ["in custody"] determination: first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave. Once the scene is set and the players' lines and actions are reconstructed, the court must apply an objective test to resolve "the ultimate inquiry": "[was] there a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." *California v. Beheler*, 463 U.S. 1121, 1125 (1983) (*per curiam*) (quoting *Mathiason*, 429 U.S., at 495).

Thompson, 516 U.S. at 112. This statement, again, hardly suggests that a different "reasonable person" has supplanted the traditional "custody" inquiry into whether there was a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest. The *Thompson* court declined to determine whether the defendant was in custody for *Miranda* purposes and remanded the case for independent review by a federal habeas court. *Id.* at 116.

Thompson, *Stansbury*, and *Berkemer*, then, each confirm that the ultimate inquiry remains whether there is a formal arrest

or restraint on freedom of movement of the degree associated with a formal arrest. *Thompson*, 516 U.S. at 112; *Stansbury*, 511 U.S. at 322; *Berkemer*, 468 U.S. at 441. Such an inquiry does not include a juvenile's age or experience.

The proof of this, moreover, may be found in this Court's actual adjudications of questions of "custody" for *Miranda* purposes. In inquiring into "custody," this Court in fact has considered only whether objective external factors amounted to restraint on freedom of movement associated with a formal arrest.

For example, in *Orozco v. Texas*, 394 U.S. 324, 326 (1969), the state argued that since the defendant was interrogated on his own bed, in familiar surroundings, *Miranda* did not apply. This Court held that the defendant should have been advised of his constitutional rights because according to an officer's testimony, the defendant was not free to go where he pleased, "but was under arrest" when he was questioned in his bedroom in the early hours of the morning. *Id.* at 325, 327.

In *Beckwith v. United States*, 425 U.S. 341, 345 (1976), the defendant argued that he should have been given *Miranda* warnings because the investigation had focused on him. He had been interviewed at his home and was neither arrested nor detained against his will. *Id.* at 342-44. He argued, however, that being the focus of the investigation placed him under psychological restraints that were equivalent of custody. *Id.* at 345. This Court did not consider this subjective "psychological" restraint to be an indicia of arrest, and stated that the defendant "hardly found himself in the custodial situation described by the Miranda Court as the basis for its holding." *Id.* at 347.

Similarly, in *Oregon v. Mathiason*, 429 U.S. at 495, this Court focused on objective indicia of arrest in determining that the defendant was not in custody. *Mathiason* explained:

> there is no indication that the questioning took place in a context where respondent's freedom to depart

> was restricted in any way. He came voluntarily to the police station, where he was immediately informed that he was not under arrest. At the close of a ½-hour interview respondent did in fact leave the police station without hindrance. It is clear from the facts that Mathiason was not in custody "or otherwise deprived of his freedom of action in any significant way."

Id. In contrast to this concentration of objective factors, this Court did not include in this analysis the fact, personal to the defendant, that he was a parolee. *See id.*

In *Beheler*, this Court focused on objective indicia of arrest in determining that the defendant had not been in custody. Specifically, the defendant voluntarily agreed to accompany police to the station house, the police specifically told the defendant that he was not under arrest, and the defendant was permitted to return to his home after the interview. 463 U.S. at 1122-23. There is no indication that the *Beheler* Court considered in determining that Beheler was not in custody the facts that Beheler had been drinking earlier in the day, was emotionally distraught, and was a parolee who was required to cooperate with the police. *See id.* at 1124-25. This Court determined, "[i]t is beyond doubt that Beheler was neither taken into custody nor significantly deprived of his freedom of action. Indeed, Beheler's freedom was not restricted in any way whatsoever." *Id.* at 1123.

Also, in *Berkemer*, 468 U.S. at 441-42, this Court again looked to objective indicia of arrest in determining that the defendant had not been subjected to custodial interrogation. After a traffic stop, the state trooper had concluded that the defendant would be charged with a traffic offense and that his freedom to leave the scene would be terminated. The defendant, however, was not told that he would be taken into custody. Instead, the trooper asked the defendant to perform a field sobriety test. While still at the scene of the traffic stop, the

trooper asked the defendant whether he had been using intoxicants. The defendant replied that he had consumed two beers and had smoked marijuana a short time before. Thereupon, the defendant was formally arrested. *Id.* at 423.

The *Berkemer* Court held that nothing in the record indicated that the defendant should have been given *Miranda* warnings at any point prior to being placed under arrest. The *Berkemer* Court reasoned that the defendant was not subjected to restraints comparable to those associated with a formal arrest and that at no time was the defendant informed that his detention would not be temporary. *Id.* at 441-42. This Court also explained that a "modest number of questions" and a request for the defendant to perform a field sobriety test at a location visible to passing motorists could not "fairly be characterized as the functional equivalent of formal arrest." *Id.* at 442.

Like *Berkemer*, the defendant in *Pennsylvania v. Bruder*, 488 U.S. 9, 9-10 (1988) (*per curiam*) made statements during roadside questioning after a traffic stop. The *Bruder* Court focused on objective external aspects, specifically: "a single police officer asking the defendant a modest number of questions and requesting him to perform a simple balancing test at a location visible to passing motorists." *Id.* at 11 (quoting *Berkemer*, 468 U.S. at 442). More importantly, this Court expressly disapproved "any general proposition that custody exists whenever motorists think that their freedom of action has been restricted, for such a rationale would eviscerate *Berkemer* altogether." *Id.* at 11 n.2. The individual's state of mind has no place in determining custody. This Court's actual analyses demonstrate that only objective external factors amounting to restraint on freedom of movement associated with a formal arrest are relevant to whether persons are "in custody" for *Miranda* purposes.

B. Age And Personal Experience Are Individual Characteristics That Do Not Reflect The Degree Of Restraint On Freedom Of Movement

Beyond the fact that this Court, by word and deed, has made it clear that "custody" depends upon objective circumstances tantamount to an arrest, *Miranda* itself suggested that a person's background is irrelevant for the custody determination. "Assessments of the knowledge the defendant possessed, based on information as to his age, education, intelligence, or prior contact with authorities, can never be more than speculation; a warning is a clearcut fact." *Miranda*, 384 U.S. at 468-69 (emphasis added).

Without any basis, the Ninth Circuit's inclusion of these factors presumes that juveniles will misperceive situations differently than a reasonable person. In essence, the Ninth Circuit's decision below requires law enforcement to calibrate their actions to account for how they might be perceived by an "unreasonable" person with a juvenile's age and experience. For the premise of the Ninth Circuit's embellishment on the law is that juveniles by their nature will misperceive as "custody" a setting that does not present objective indicia of restraint tantamount to an arrest.

Moreover, the Ninth Circuit's extension of this Court's precedents from a disparate context would, as a practical matter, operate as a *per se* rule requiring police officers to give *Miranda* advisements to all juveniles and persons that police officers suspect to be juveniles, regardless of whether they are actually in custody. A rule that *Miranda* applies to all juveniles or persons who appear to be juveniles has significant drawbacks and makes it unacceptable. It would substantially impede law enforcement by compelling the police either to take the time to warn all juveniles of their constitutional rights or forgo using self-incriminating statements made by those persons. *Cf. Berkemer*, 468 U.S. at 441 (refusing to create a rule that *Miranda* applies to all traffic stops). Moreover, such an overly-

expansive rule fails to account for the value of confessions. "A free and voluntary confession is deserving of the highest credit, because it is presumed to flow from the strongest sense of guilt * * *." *King v. Warickshall*, 1 Leach 262, 263-64, 168 Eng. Rep. 234, 235 (K.B. 1783). "Admissions of guilt are more than merely 'desirable,' * * *; they are essential to society's compelling interest in finding, convicting, and punishing those who violate the law." *Moran*, 475 U.S. at 426 (quoting *United States v. Washington*, 431 U.S. 181, 186 (1977)).

This case demonstrates the arbitrariness of the Ninth Circuit's presumption. During his cross-examination at trial, Alvarado agreed with the prosecutor that his conversation with Detective Comstock was "low-key" and "friendly." J.A. 437-38. He did not feel threatened or coerced. J.A. 438-39. Also, Alvarado was over seventeen and a half years old at the time of the interview. J.A. 344. Under the Ninth Circuit's holding, his age and experience would have been irrelevant had he been interviewed less than six months later.

A juvenile's age and experience might be relevant to whether a confession is voluntary. "The requirement that *Miranda* warnings be given does not, of course, dispense with the voluntariness inquiry." *Dickerson*, 530 U.S. at 435. Regardless of whether a juvenile defendant receives *Miranda* warnings, he or she might assert that the statements were involuntary. *See id.* at 444. Determining the voluntariness of a confession is a distinct inquiry from the "custody" determination for *Miranda* purposes. Including a juvenile's age and experience for a "custody" determination would conflate the two separate inquiries. To require courts to consider the age and experience of a person if he or she is a juvenile would be "an extension of the *Miranda* requirements [that] would cut this Court's holding in that case completely loose from its own explicitly stated rationale." *Cf. Beckwith*, 425 U.S. at 345.

C. Including A Juvenile's Age And Experience For "Custody" Determinations Would Blur *Miranda* Advisement Guidelines For Law Enforcement Officers To Follow

This Court in *Miranda* stated, "Our decision is not intended to hamper the traditional function of police officers in investigating crime." *Miranda*, 384 U.S. at 477; *see Moran v. Burbine*, 475 U.S. at 426-27 (stating that *Miranda* struck a balance between two interests—the need for effective enforcement of criminal laws and preventing constitutionally impermissible compulsion). Accordingly, this Court took care to announce "concrete constitutional guidelines for law enforcement agencies and courts to follow." *Miranda*, 384 U.S. at 442. It has been a continuing goal of this Court's *Miranda* jurisprudence to provide effective guidance to law enforcement. *See Thompson v. Keohane*, 516 U.S. at 115. As this Court has "stressed on numerous occasions, '[o]ne of the principal advantages' of *Miranda* is the ease and clarity of its application." *Moran*, 475 U.S. at 425 (quoting *Berkemer*, 468 U.S. at 430, and citing *New York v. Quarles*, 467 U.S. 649, 662-64 (1984) and *Fare v. Michael C.*, 442 U.S. at 718). Including a juvenile's age and experience for a "custody" determination, and therefore further suggesting that subjective perceptions of the suspect always should play a role, "would have the inevitable consequence of muddying *Miranda*'s otherwise relatively clear waters." *Cf. Moran*, 475 U.S. at 425.

In *Dickerson*, 530 U.S. at 444, this Court noted that a totality of the circumstances test would be more difficult than the "in custody" determination under *Miranda* for law enforcement officers to conform to, and for courts to apply in a consistent manner. As the *Miranda* Court recognized, assessments of factors such as age and experience "can never be more than speculation." 384 U.S. at 468-49. Law enforcement officers would face the prospect that identical police conduct

would not be deemed "custody" for some individuals, but would be for others.

The practical consequence of including age and experience in a "custody" determination for *Miranda* purposes is that law enforcement officers will not be able to determine whether *Miranda* rights should be given to a juvenile unless they can divine the age and experiences of the juvenile. It would be particularly impractical for law enforcement officers to obtain such information while on the scene of a crime. Including a juvenile's age and experience for custody determinations would not serve the interests that the *Miranda* rule was designed to protect and would impose burdens associated with *Miranda* on the police.

CONCLUSION

The judgment of the court of appeals should be reversed.

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